

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Brian Whitaker

Plaintiff,

v.

Hot Topic, Inc., a
California Corporation

Defendant.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Brian Whitaker complains of Hot Topic, Inc., a California Corporation, and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He suffers from a C-4 spinal cord injury. He is a quadriplegic. He uses a wheelchair for mobility.

2. Defendant Hot Topic, Inc. owned Hot Topic located at or about 5701 Outlets at Tejon Pkwy, Tejon Ranch, California, in December 2020.

3. Defendant Hot Topic, Inc. owns Hot Topic ("Store") located at or about 5701 Outlets at Tejon Pkwy, Tejon Ranch, California, currently.

4. Plaintiff does not know the true names of Defendants, their business

1 capacities, their ownership connection to the property and business, or their
2 relative responsibilities in causing the access violations herein complained of,
3 and alleges a joint venture and common enterprise by all such Defendants.
4 Plaintiff is informed and believes that each of the Defendants herein is
5 responsible in some capacity for the events herein alleged, or is a necessary
6 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
7 the true names, capacities, connections, and responsibilities of the Defendants
8 are ascertained.

9
10 **JURISDICTION & VENUE:**

11 5. The Court has subject matter jurisdiction over the action pursuant to 28
12 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
13 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

14 6. Pursuant to supplemental jurisdiction, an attendant and related cause
15 of action, arising from the same nucleus of operative facts and arising out of
16 the same transactions, is also brought under California's Unruh Civil Rights
17 Act, which act expressly incorporates the Americans with Disabilities Act.

18 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
19 founded on the fact that the real property which is the subject of this action is
20 located in this district and that Plaintiff's cause of action arose in this district.

21
22 **FACTUAL ALLEGATIONS:**

23 8. Plaintiff went to the Store in December 2020 with the intention to avail
24 himself of its goods and to assess the business for compliance with the
25 disability access laws.

26 9. The Store is a facility open to the public, a place of public
27 accommodation, and a business establishment.

28 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed

1 to provide wheelchair accessible paths of travel in conformance with the ADA
2 Standards as it relates to wheelchair users like the plaintiff.

3 11. The Store provides paths of travel to its customers but fails to provide
4 wheelchair accessible paths of travel.

5 12. A problem that plaintiff encountered is that the paths of travel inside the
6 Store were too narrow.

7 13. Plaintiff believes that there are other features of the paths of travel that
8 likely fail to comply with the ADA Standards and seeks to have fully compliant
9 paths of travel for wheelchair users.

10 14. On information and belief, the defendants currently fail to provide
11 wheelchair accessible paths of travel.

12 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
13 personally encountered these barriers.

14 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
15 wheelchair accessible facilities. By failing to provide accessible facilities, the
16 defendants denied the plaintiff full and equal access.

17 17. The failure to provide accessible facilities created difficulty and
18 discomfort for the Plaintiff.

19 18. The defendants have failed to maintain in working and useable
20 conditions those features required to provide ready access to persons with
21 disabilities.

22 19. The barriers identified above are easily removed without much
23 difficulty or expense. They are the types of barriers identified by the
24 Department of Justice as presumably readily achievable to remove and, in fact,
25 these barriers are readily achievable to remove. Moreover, there are numerous
26 alternative accommodations that could be made to provide a greater level of
27 access if complete removal were not achievable.

28 20. Plaintiff will return to the Store to avail himself of its goods and to

1 determine compliance with the disability access laws once it is represented to
2 him that the Store and its facilities are accessible. Plaintiff is currently deterred
3 from doing so because of his knowledge of the existing barriers and his
4 uncertainty about the existence of yet other barriers on the site. If the barriers
5 are not removed, the plaintiff will face unlawful and discriminatory barriers
6 again.

7 21. Given the obvious and blatant nature of the barriers and violations
8 alleged herein, the plaintiff alleges, on information and belief, that there are
9 other violations and barriers on the site that relate to his disability. Plaintiff will
10 amend the complaint, to provide proper notice regarding the scope of this
11 lawsuit, once he conducts a site inspection. However, please be on notice that
12 the plaintiff seeks to have all barriers related to his disability remedied. See
13 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
14 encounters one barrier at a site, he can sue to have all barriers that relate to his
15 disability removed regardless of whether he personally encountered them).

16
17 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
18 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
19 Defendants.) (42 U.S.C. section 12101, et seq.)

20 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint.

23 23. Under the ADA, it is an act of discrimination to fail to ensure that the
24 privileges, advantages, accommodations, facilities, goods and services of any
25 place of public accommodation is offered on a full and equal basis by anyone
26 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
27 § 12182(a). Discrimination is defined, inter alia, as follows:

28 a. A failure to make reasonable modifications in policies, practices,

1 or procedures, when such modifications are necessary to afford
2 goods, services, facilities, privileges, advantages, or
3 accommodations to individuals with disabilities, unless the
4 accommodation would work a fundamental alteration of those
5 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

6 b. A failure to remove architectural barriers where such removal is
7 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
8 defined by reference to the ADA Standards.

9 c. A failure to make alterations in such a manner that, to the
10 maximum extent feasible, the altered portions of the facility are
11 readily accessible to and usable by individuals with disabilities,
12 including individuals who use wheelchairs or to ensure that, to the
13 maximum extent feasible, the path of travel to the altered area and
14 the bathrooms, telephones, and drinking fountains serving the
15 altered area, are readily accessible to and usable by individuals
16 with disabilities. 42 U.S.C. § 12183(a)(2).

17 24. When a business provides paths of travel, it must provide accessible
18 paths of travel.

19 25. Here, accessible paths of travel have not been provided in conformance
20 with the ADA Standards.

21 26. The Safe Harbor provisions of the 2010 Standards are not applicable
22 here because the conditions challenged in this lawsuit do not comply with the
23 1991 Standards.

24 27. A public accommodation must maintain in operable working condition
25 those features of its facilities and equipment that are required to be readily
26 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

27 28. Here, the failure to ensure that the accessible facilities were available
28 and ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 29. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code § 51(b).

11 30. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 31. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
15 rights to full and equal use of the accommodations, advantages, facilities,
16 privileges, or services offered.

17 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiff, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21
22 **PRAYER:**

23 Wherefore, Plaintiff prays that this Court award damages and provide
24 relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with the
26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
27 plaintiff is not invoking section 55 of the California Civil Code and is not
28 seeking injunctive relief under the Disabled Persons Act at all.

1 2. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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6 Dated: December 22, 2020 CENTER FOR DISABILITY ACCESS

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10 By: _____

11 Amanda Seabock, Esq.
12 Attorney for plaintiff
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